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11 Oakland, CA 94609  
12 Tel: (415) 568-5200  
13 Attorneys for Plaintiff  
14 CALIFORNIA SPORTFISHING  
15 PROTECTION ALLIANCE

16 **UNITED STATES DISTRICT COURT**

17 **EASTERN DISTRICT OF CALIFORNIA**

18 CALIFORNIA SPORTFISHING  
19 PROTECTION ALLIANCE,

20 Plaintiff,

21 vs.

22 PACIFIC BELL TELEPHONE  
23 COMPANY,

24 Defendant.

25 Case No.: 2:21-cv-00073-JDP

26 **DECLARATION OF MATTHEW C.  
27 MACLEAR IN SUPPORT OF MOTION TO  
28 APPROVE SETTLEMENT AND FOR ENTRY  
OF CONSENT JUDGMENT**

DATE: November 7, 2024

TIME: 10:00 a.m.

DEPT: 09

JUDGE: Hon. Jeremy D. Peterson

1 I, Matthew C. Maclear, declare:

2       1. I am an attorney licensed to practice law before all courts of the State of California  
3 and am counsel for plaintiff California Sportfishing Protection Alliance (“CSPA” or “Plaintiff”). I  
4 was admitted to practice law in November 2000 and am a partner with Aqua Terra Aeris Law  
5 Group. I have personal knowledge of the statements contained herein and would competently testify  
6 thereto if called as a witness.

7       2. Aqua Terra Aeris Law Group became lead counsel for CSPA in this matter in Fall  
8 2023, after the first consent decree was vacated.

9       3. Attached hereto as **Exhibit 1** is a true and correct copy of the Proposed Consent  
10 Decree, which has been executed by both parties.

11       4. Plaintiff will serve the Proposed Consent Decree and the Motion to Approve the  
12 Settlement on the California Attorney General immediately after filing the motion.

13       5. Plaintiff has set the hearing on the motion more than 45 days from the filing and  
14 service on the Attorney General to provide the adequate time for Attorney General review.

15       6. This lawsuit concerns two telecommunications cables in Lake Tahoe (the  
16 “Cables”). The Cables are mostly submerged in shallow waters from Baldwin Beach to Rubicon  
17 Point, including one in Lake Tahoe’s Emerald Bay. One cable lies in the Emerald Bay area of Lake  
18 Tahoe and is approximately 2,000 feet in length. The second cable is approximately seven miles in  
19 length and is located in shallow waters along the west shore of the Lake. See Exhibit 2, Map B. The  
20 end of the cable in Emerald Bay is severed completely. Its open end is submerged below the surface,  
21 exposing the lead sheathing directly to the water. The seven-mile cable terminates into the lake  
22 bottom. However, along its length, it is worn and abraded and in places the tar impregnated jute  
23 materials have been broken, exposing the lead sheathing to the open water.

24       7. Based on documents received from the State Lands Commission through the  
25 California Public Records Act, I am informed and believe that Defendant discontinued use of the  
26 Cables while maintaining its rights of easement.

27

1       8.     At the end of 2023, my firm, on behalf of CSPA, contracted with divers to survey  
2 and inspect the Cables. I reviewed the video of the survey and observed numerous locations where  
3 the Cables were damaged, exposing the lead sheathing that was originally designed to protect the  
4 copper strands from contact with water.

5       9.     In early 2024, Plaintiff's consultants conducted comprehensive sampling of biofilm  
6 on the Cables, sediment near the Cables, water samples from around the Cables, and the Cables  
7 themselves.

8       10.    The sampling results showed elevated levels of lead in water very close to the Cable,  
9 sediment near the Cables, and especially in biofilm on the Cables, as compared to reference sites.

10      11.    The Parties engaged in discovery from August 2023 through June 2024. During this  
11 period, Plaintiff submitted initial disclosures and responded to Defendant's interrogatories, requests  
12 for admission, and requests for production. Plaintiff also served on Defendant interrogatories,  
13 requests for production, and requests for admission.

14      12.    Attached hereto as **Exhibit 2** is a true and correct copy of Plaintiff's First Amended  
15 Responses to Defendant's First Set of Interrogatories.

16      13.    During discovery, Defendant admitted that it owns the Cables. Attached hereto as  
17 **Exhibit 3** is a true and correct copy of Defendant Pacific Bell Telephone Company's Amended  
18 Responses to Plaintiff's First Set of Requests for Admission.

19      14.    Moreover, both Parties propounded discovery requests on third parties. Defendant  
20 sought and received tens of thousands of documents from various third parties, including Marine  
21 Taxonomic Services, Environmental Law Foundation, and others. Plaintiff served document  
22 subpoenas to the U.S. Environmental Protection Agency and state agencies.

23      15.    The Parties restarted settlement negotiations, and such negotiations resulted in the  
24 Proposed Consent Decree attached hereto as **Exhibit 1**.

25      16.    For the purposes of settlement, the Parties agree that Defendant will not pay a civil  
26 penalty pursuant to Proposition 65.

27

28

1       17. Plaintiff believes settling for no civil penalties is reasonable given the substantial  
2 expense of removing the Cables, estimated to be \$1.5 million or more.

3       18.     Defendant did not act unlawfully when it laid the Cables in Lake Tahoe, and it is  
4 Plaintiff's understanding that Defendant was authorized to leave the Cables in place when it stopped  
5 using them.

6       19. Throughout this action, Plaintiff has been represented by counsel with decades of  
7 experience litigating under Proposition 65 and federal environmental laws, such as the Resource  
8 Conservation and Recovery Act (RCRA).

9 I declare, under penalty of perjury under the laws of the State of California, that the  
10 foregoing is true and correct. This declaration was executed on September 18, 2024 in Oakland,  
11 California.

/s/ Matthew C. Maclear

Matthew C. Maclear

Attorney for Plaintiff

## CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

# **EXHIBIT 1**

1 MATTHEW MACLEAR (State Bar No. 209228)  
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2 JASON FLANDERS (State Bar No. 238007)  
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9 | Additional counsel on p. 2

10 Attorneys for Plaintiff  
11 CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

15 CALIFORNIA SPORTFISHING  
16 PROTECTION ALLIANCE, a non-profit  
corporation,

Case No.: 2:21-cv-00073-MCE-JDP

## **[PROPOSED] CONSENT DECREE**

**(Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a)(1)(B) and California Safe Drinking Water and Toxic Enforcement Act, Cal. Health & Safety Code § 25249.5)**

17 Plaintiff,  
18 vs.  
19  
20 PACIFIC BELL TELEPHONE  
COMPANY,  
21 Defendant.

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4 245 Kentucky Street, Suite B3  
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30 437 Post Street  
31 Napa, CA 94559  
32 Tel: (530) 514-4115

1           **WHEREAS**, Plaintiff California Sportfishing Protection Alliance (“Plaintiff”) filed the  
2 above-captioned action (the “Action”) against Defendant Pacific Bell Telephone Company  
3 (“Defendant”), alleging violations of the federal Resource Conservation and Recovery Act (“RCRA”)  
4 42 U.S.C. 6901 *et seq.*, and the Safe Drinking Water and Toxic Enforcement Act of 1986  
5 (“Proposition 65”), Cal. Health & Safety Code section 25249.5, *et seq.*;

6           **WHEREAS**, Plaintiff contends it is a non-profit public benefit corporation dedicated to the  
7 preservation, protection, and defense of the environment, wildlife, and natural resources of  
8 California’s waters;

9           **WHEREAS**, Plaintiff contends that Defendant obtained licenses, easements or other  
10 approvals from the California State Lands Commission for the purpose of installing and operating  
11 submarine telecommunications cables along the bottom of the western side of Lake Tahoe (the  
12 “Easements”);

13           **WHEREAS**, two telecommunications cables have been installed in the Lake waters pursuant  
14 to the Easements that, when taken together, are approximately 8 miles long (“the Cables”) (A map  
15 identifying the approximate current locations of the Cables in the Lake is attached as **Exhibit A**);

16           **WHEREAS**, Plaintiff alleges the Cables violate RCRA and Proposition 65.

17           **WHEREAS**, the State of California has listed Lake Tahoe as a source of drinking water within  
18 the meaning of Proposition 65;

19           **WHEREAS**, Plaintiff provided Defendant with a written Notice of Violation of RCRA and  
20 Proposition 65 (“Notice Letter”), and Plaintiff further contends that the Notice Letter was provided  
21 by certified mail return receipt requested to Defendant’s Chief Executive Officer and agent for service  
22 of process; the Administrator of the United States Environmental Protection Agency (“EPA”); the  
23 Regional Administrator of EPA Region IX; the California Attorney General; the Acting Director of  
24 the California Department of Resources, Recycling and Recovery; and the District Attorneys for the  
25 California counties of Placer and El Dorado, all in accordance with 40 C.F.R. section 254.2 and Cal.  
26 Health & Safety Code section 25249.7 (A true copy of the Notice Letter is attached as **Exhibit A** to  
27 ECF No. 1);

28           **WHEREAS**, Defendant disputes Plaintiff’s allegations set forth in the Notice Letter and in

1 Plaintiff's original and amended Complaints and contends Plaintiff's claims lack merit;

2       **WHEREAS**, Defendant has obtained permits and other regulatory approvals ("Regulatory  
3 Approvals") needed under applicable law to remove the Cables, which are identified in ECF No. 33;

4       **WHEREAS**, in an effort to reduce the cost and expense associated with litigation, the Parties  
5 wish to resolve this matter pursuant to the terms of this Consent Decree (the "Final Consent Decree"),  
6 which entails the removal of the Cables pursuant to the terms of the Final Consent Decree;

7       **WHEREAS**, the Parties agree that Defendant, in entering into this Final Consent Decree,  
8 makes no admission of liability or of any issue of law or fact whatsoever regarding the claims made  
9 by Plaintiff in the Action or the Notice Letter;

10      **WHEREAS**, for the purposes of this Final Consent Decree, the Parties agree that: (i) the Court  
11 has personal jurisdiction over the Parties and subject matter jurisdiction under 28 U.S.C. sections  
12 1331 and 1367, and RCRA (42 U.S.C. § 6972(a)(1)(B)); (ii) venue is proper in this Court under 28  
13 U.S.C. section 1391(b) and RCRA (42 U.S.C. § 6972(a)), because a substantial part of the events or  
14 omissions giving rise to Plaintiff's claims occurred in this District. Intra-district venue is proper in  
15 Sacramento, California, because the sources of the alleged violations are located in El Dorado and  
16 Placer Counties, and Plaintiff contends it has standing under Article III of the U.S. Constitution to  
17 bring this Action;

18      **WHEREAS**, the Parties agree that the Court should retain jurisdiction over this matter for  
19 purposes of interpreting, modifying, or enforcing the terms of this Final Consent Decree for the life  
20 of the Final Consent Decree, or as long thereafter as is necessary for the Court to resolve any motion  
21 to enforce this Final Consent Decree;

22      **WHEREAS**, promptly after the mutual execution of this Final Consent Decree (the  
23 "Execution Date"), Plaintiff shall file a motion to approve entry of this Final Consent Decree, and  
24 shall serve a copy of the motion on the California Attorney General for the 45-day statutory review  
25 period specified in Proposition 65 (Health & Safety Code § 25249.7(f)), and California Code of  
26 Regulations, title 11, section 3003;

27      **WHEREAS**, the Parties agree to work together to secure prompt judicial approval of the Final  
28 Consent Decree, regardless of any objections from any interested party;

1           **WHEREAS**, consistent with the Regulatory Approvals, the Parties' shared goal is to work in  
2 a cooperative fashion to effectuate the removal of the Cables as soon as practicable, and therefore  
3 have mutually set a target period to complete removal by November 30, 2024 or the next date in 2025  
4 that is available before May 26, 2025 (Memorial Day), based on weather conditions and consistency  
5 with the permitting process ("Target Removal Period");

6           **WHEREAS**, in the event that the Court for any reason denies the motion to approve the  
7 Decree in the form submitted with the motion to approve, this Decree shall become null and void;  
8 and

9           **WHEREAS**, the date this Final Consent Decree is entered by the Court shall be the "Court  
10 Entry Date."

11           **NOW, THEREFORE, IT IS HEREBY STIPULATED BETWEEN THE PARTIES,  
12 AND ORDERED AND DECREED BY THE COURT AS FOLLOWS:**

13           **1. Defendant Shall Promptly and Diligently Seek To Secure Any Additional  
14 Authorizations Needed To Remove the Cables.** Starting no later than five (5) business days after  
15 the Execution Date, Defendant shall use diligent and commercially reasonable efforts to promptly  
16 pursue any permits or other governmental authorizations beyond the existing Regulatory Approvals  
17 necessary for lawful removal and off-site transport for disposal or recycling of the Cables (the  
18 "Authorizations"). Upon receiving all the Authorizations, Defendant shall notify Plaintiff in writing  
19 within five (5) business days.

20           **2. Removal of the Cables.** Consistent with the scope of work set forth in the existing  
21 Regulatory Approvals and after the Court Entry Date, Defendant shall remove the Cables from the  
22 waters of Lake Tahoe and transport them for lawful off-site disposal or to a cable recycler promptly  
23 after receipt of all Authorizations, subject to compliance with all Authorizations and applicable  
24 laws, rules and regulations. Defendant has agreed to use diligent and commercially reasonable  
25 efforts to remove the Cables by the Target Removal Period. Defendant shall notify Plaintiff in  
26 writing within five (5) business days of having completed removal of the Cables from Lake Tahoe.

27           **3. Notice of Inability To Meet Target Removal Period.** If Defendant cannot complete  
28 removal and disposal/recycling of the Cables by the end of the Target Removal Period, in

1 accordance with Paragraph 2, Defendant shall notify Plaintiff in writing within five (5) business  
2 days before the end of the Target Removal Period. Defendant agrees to provide Plaintiff with an  
3 update on the status of the Authorizations, the efforts Defendant has made to obtain required  
4 Authorizations and to complete removal by the end of the Target Removal Period, and Defendant's  
5 plan and contemplated timeline to remove the Cables.

6         **4. Dispute Resolution.** If a dispute under this Final Consent Decree arises, or either  
7 Party believes in good faith that a breach of this Final Consent Decree has occurred, the Parties  
8 shall meet and confer within fourteen (14) days of receiving written notification from the other  
9 Party of a request to confer about the matter. If either Party fails to meet and confer in good faith,  
10 or the meet-and-confer process is unsuccessful, and after seven (7) days have elapsed from the date  
11 the meet-and-confer occurred or should have occurred, then either Party shall be entitled to all  
12 rights and remedies under the law, including filing a motion with the Court. Notwithstanding any  
13 other provision of this Final Consent Decree, the Court shall retain jurisdiction over the Action for  
14 the limited purposes of enforcement of the terms of this Final Consent Decree or for adjusting upon  
15 a showing of good cause any deadlines or time limits set forth in this Final Consent Decree.

16         **5. Plaintiff's Release and Waiver.** Upon the Court Entry Date of this Final Consent  
17 Decree, Plaintiff, on its own behalf and on behalf of its members, subsidiaries, successors, assigns,  
18 directors, officers, agents, attorneys, representatives, and employees, releases and forever  
19 discharges Defendant and its officers, directors, employees, shareholders, parents, subsidiaries, and  
20 affiliates, and each of their predecessors, successors and assigns, and each of their agents, attorneys,  
21 consultants, and other representatives (each a "Released Defendant Party") from any and all claims  
22 or causes of action (i) arising from or pertaining to claims asserted in the Action or the Notice  
23 Letter, including, without limitation, all claims for injunctive relief, damages, losses, penalties,  
24 fines, sanctions, mitigation, or any other sum incurred or claimed or which could have been claimed  
25 under RCRA or Proposition 65, for the alleged failure of Defendant to comply with RCRA and/or  
26 Proposition 65, up to the Court Entry Date, except for claims for payment of Plaintiff's legal fees  
27 and costs in this Action; and (ii) any other claims (a) relating to the Cables or (b) that could have  
28 been brought against Defendant based on the facts alleged in the Second Amended Complaint or

1 otherwise known to Plaintiff.

2 Plaintiff, on behalf of the public interest, hereby waives, releases, and forever discharges all  
3 Proposition 65 claims that are the subject of the Notice Letter.

4         **6. Defendant's Release and Waiver.** Defendant, on its own behalf and on behalf of any  
5 Released Defendant Party under its control, releases Plaintiff (and its officers, directors, employees,  
6 members, parents, subsidiaries, and affiliates, and each of their successors and assigns, and its  
7 agents, attorneys, and other representative) from, and waives all claims which arise from or pertain  
8 to the Action, including all claims for fees (including fees of attorneys, experts, and others), costs,  
9 expenses, or any other similar sums incurred or claimed or which could have been claimed for  
10 matters associated with or related to the Action.

11         **7. The Parties' Waiver of California Civil Code Section 1542.** Each Party  
12 acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

13             A general release does not extend to claims that the creditor or releasing  
14 party does not know or suspect to exist in his or her favor at the time of  
15 executing the release, which if known by him or her must have  
16 materially affected his or her settlement with the debtor or released  
party.

17             Each Party waives and relinquishes any right or benefit it has or may have under California  
18 Civil Code section 1542 or any similar provision under statutory or non-statutory law. The Parties  
19 acknowledge that each may subsequently discover facts in addition to, or different from, those that it  
20 believes to be true with respect to the claims released herein. The Parties agree that this Decree and  
21 the releases contained herein shall be and remain effective in all respects notwithstanding the  
22 discovery of such additional or different facts.

23         **8. Plaintiff's Fees & Costs.** The amount of any award of legal fees and costs to Plaintiff  
24 in this Action shall be determined by the Court. Plaintiff shall file any motion seeking any legal  
25 fees and costs by October 31, 2024, and shall notice any such motion for a hearing date that is 45  
26 days after the filing date.

27         **9. No Admission of Liability.** The Parties enter into this Final Consent Decree for the  
28 purpose of avoiding prolonged and costly litigation of the claims in the Action. Nothing in this

1 Final Consent Decree shall be construed as, and Defendant expressly does not intend to imply, an  
2 admission as to any fact, finding, issue of law, or violation of law, nor shall compliance with this  
3 Final Consent Decree constitute or be construed as an admission by Defendant of any fact, finding,  
4 conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or  
5 otherwise affect the obligation, responsibilities, and duties of the Parties under this Final Consent  
6 Decree.

7       **10. Execution.** This Final Consent Decree may be executed in one or more counterparts  
8 which, taken together, shall be deemed to constitute one and the same document. An executed copy  
9 of this Final Consent Decree shall be valid as an original.

10       **11. Cooperation.** Both Parties shall support entry of this Final Consent Decree and shall  
11 waive any right to appeal it if entered. If the Court approves and enters this Final Consent Decree,  
12 but such Final Consent Decree is reversed and vacated by an appellate court, or if the Court does  
13 not approve and enter this Final Consent Decree within ninety (90) days of the Parties having  
14 submitted it to the Court for approval and entry, the Parties shall meet and confer as to whether to  
15 modify the terms of this Final Consent Decree. If the Parties do not jointly agree on a course of  
16 action to take, the Action shall proceed on its normal course on the Court's calendar.

17       **12. Choice of Law.** The terms of this Final Consent Decree shall be interpreted pursuant  
18 to the laws of California.

19       **13. Authority.** The undersigned are authorized to execute this Final Consent Decree on  
20 behalf of their respective Parties and have read, understood and agreed to be bound by all of the  
21 terms and conditions of this Final Consent Decree.

22       **14. Integration and Non-Assignment.** This Final Consent Decree contains all of the  
23 terms and conditions agreed upon by the Parties relating to the matters covered by the Final Consent  
24 Decree, and supersedes any and all prior and contemporaneous agreements, negotiations,  
25 correspondence, understandings, and communications of the Parties, whether oral or written,  
26 respecting the matters covered by this Final Consent Decree. This Final Consent Decree is made  
27 for the sole benefit of the Parties, and no other person or entity shall have any rights or remedies  
28 under or by reason of this Final Consent Decree, unless otherwise expressly provided for therein.

1           15. **Notices.** Any notices or documents required or provided for by this Final Consent  
2 Decree or related thereto that are to be provided to Plaintiff shall be sent by electronic mail  
3 transmission to the email addresses listed below:

4           Chris Shutes, Executive Director, CSPA - E-mail: [blancapaloma@msn.com](mailto:blancapaloma@msn.com)

5           With copies sent to:

6           Matthew C. Maclear - E-mail: [mcm@atalawgroup.com](mailto:mcm@atalawgroup.com)

7           Erica A. Maharg - E-mail: [eam@atalawgroup.com](mailto:eam@atalawgroup.com)

8           Any notices or documents required or provided for by this Final Consent Decree or related  
9 thereto that are to be provided to Defendant shall be sent by electronic mail transmission to the  
10 email addresses listed below:

11           Sarah Teachout ([sarah.teachout@att.com](mailto:sarah.teachout@att.com))  
12 Senior Vice President and Assistant General Counsel  
13 AT&T Services, Inc.  
14 208 S. Akard Street  
Dallas, Texas 75202

15           With copies sent to:

16           Navi Dhillon ([navidhillon@paulhastings.com](mailto:navidhillon@paulhastings.com))  
17 Deborah Schmall ([deborahschmall@paulhastings.com](mailto:deborahschmall@paulhastings.com))  
18 Paul Hastings LLP  
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San Francisco, CA 94111

19           Hariklia Karis ([hariklia.karis@kirkland.com](mailto:hariklia.karis@kirkland.com))  
20 Mark Nomellini ([mark.nomellini@kirkland.com](mailto:mark.nomellini@kirkland.com))  
21 Kirkland & Ellis LLP  
22 333 West Wolf Point Plaza  
Chicago, IL 60654

23           Each Party shall promptly notify the other of any change in the above listed contact  
24 information. Signatures of the Parties transmitted by facsimile or email shall be deemed binding.

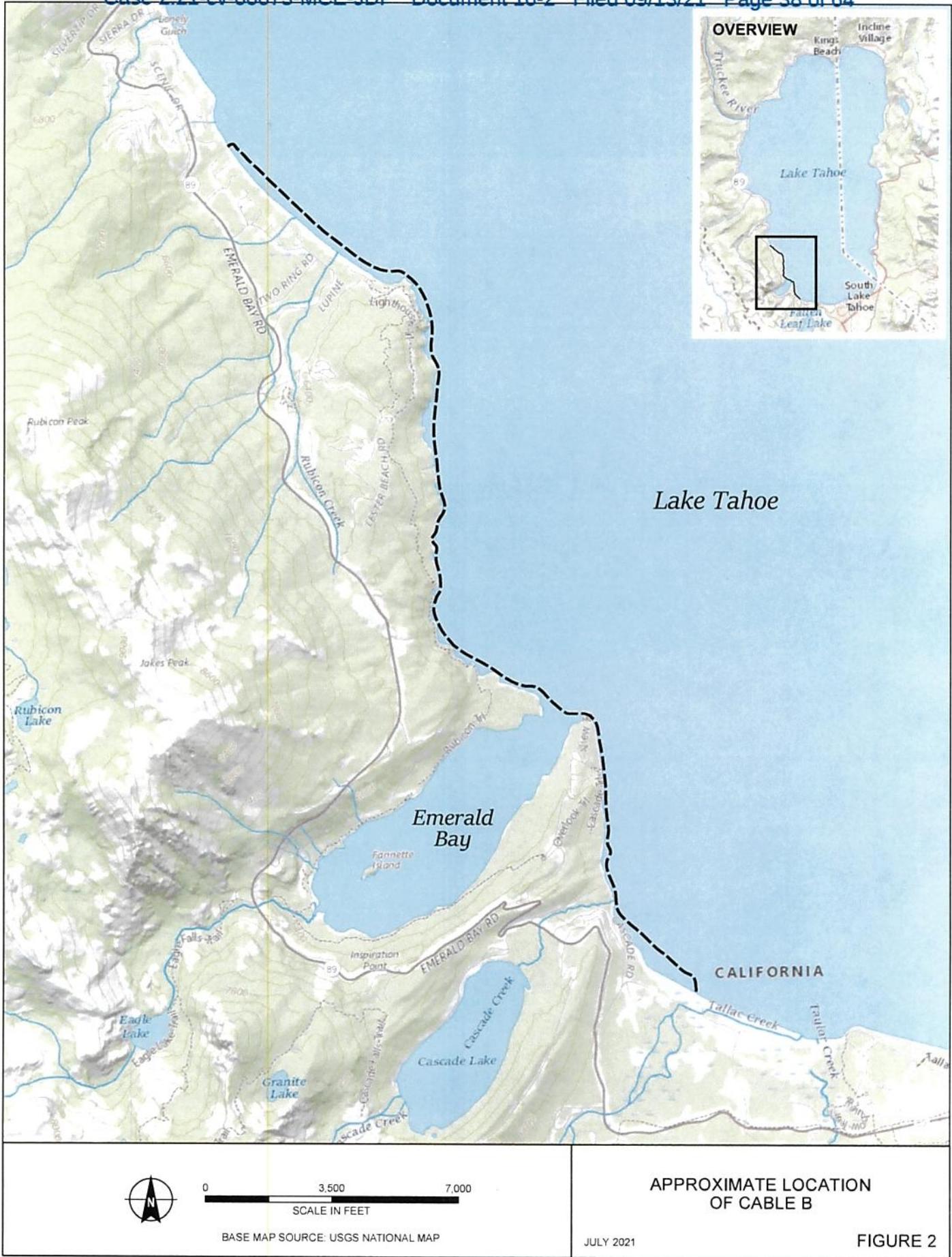
25           16. **Mutually Drafted.** This Final Consent Decree shall be deemed to have been drafted  
26 equally by the Parties, and shall not be interpreted for or against any Party on the ground that any  
27 such Party drafted it.

28           17. **Amendments.** This Final Consent Decree may be amended or modified only by a



# EXHIBIT A





# **EXHIBIT 2**

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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE,

Plaintiff,  
v.  
PACIFIC BELL TELEPHONE COMPANY  
Defendant.

Case No: 2:21-cv-00073-JDP

**PLAINTIFF'S FIRST AMENDED  
RESPONSES TO DEFENDANT'S FIRST  
SET OF INTERROGATORIES**

1 MATTHEW MACLEAR (State Bar No. 209228)

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1 PROPOUNDING PARTY: DEFENDANT PACIFIC BELL TELEPHONE COMPANY  
2 RESPONDING PARTY: PLAINTIFF CALIFORNIA SPORTFISHING PROTECTION  
3 ALLIANCE  
4 SET NUMBER: ONE

5 **PRELIMINARY STATEMENT**

6 Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff California  
7 Sportfishing Protection Alliance (“CSPA” or “Plaintiff”) makes the following amended responses to  
8 the First Set of Interrogatories (“Interrogatories”), Interrogatory Numbers 1, 2, 3, and 12, propounded  
9 by Defendant Pacific Bell Telephone Company (“Defendant”). CSPA’s responses to all other  
10 Interrogatories included in Plaintiff’s to Defendant’s First Set of Interrogatories to Plaintiff, served  
11 September 20, 2023, remain unchanged.

12 CSPA has not yet completed its investigation, discovery, or trial preparation for this matter.  
13 These responses are based only upon such information and documents which are presently available  
14 and specifically known to CSPA. It is anticipated that further discovery, independent investigation,  
15 and analysis will reveal additional documents or facts, add meaning to the known facts or documents,  
16 as well as establish entirely new factual conclusions and legal contentions, all of which might lead to  
17 substantial additions, variations and changes to the responses set forth herein. CSPA reserves the right  
18 to produce evidence of any subsequently discovered documents or facts which CSPA may later recall,  
19 locate, or discover. Accordingly, CSPA reserves the right to change these responses as additional  
20 facts are ascertained, analyses are made, legal research is completed, documents are discovered, and  
21 contentions are made. These responses should in no way prejudice CSPA in relation to further  
22 discovery, research, or analysis.

23 **INTERROGATORY NO. 1:**

24 Describe in detail all testing conducted by YOU concerning the CABLES.

25 **RESPONSE TO INTERROGATORY NO. 1:**

26 Plaintiff objects to the extent that the request seeks information protected by an attorney client  
27 privilege or constitutes attorney work product. Plaintiff further objects that the request is vague and  
28 ambiguous in its use of the undefined word “testing,” as the term is undefined and unclear. Plaintiff

1 further objects that the subject of this request or interrogatory is properly the subject of expert  
2 testimony, calls for premature disclosure of expert opinions, and responses will be provided to  
3 properly promulgated expert discovery. Without waiving these objections and subject to them,  
4 Plaintiff responds as follows:

5 Prior to this action being filed, attorneys for Plaintiff obtained a piece of cable which attorneys  
6 for Plaintiff are informed and believe was removed from the disconnected end of Defendant's cable  
7 in Lake Tahoe some years before. The water that was used for testing the discharge of lead was taken  
8 directly from Lake Tahoe. A piece of the Cable approximately 40 centimeters in length was  
9 submerged in a plastic container of Lake Tahoe water. A sample was taken of the water after one day.  
10 A second sample of the water was taken after seven days. These samples, as well as a sample blank  
11 of the Lake Tahoe water prior to the placement of the Cable, were provided to a certified lab for  
12 analysis of lead content. The analysis of sample blank showed no detection of lead in the water. The  
13 analysis of the sample taken after the cable had been submerged in the Lake Tahoe water for one day  
14 showed a concentration of 650 micrograms of lead per liter of water, and analysis of the sample after  
15 one week showed that enough lead had continued to be dissolved from the Cable to raise the  
16 concentration of lead in the water to 1,500 micrograms per liter. A copy of the laboratory report of  
17 this concentration has been or will be provided as part of the document production requested by  
18 Defendant. A second test was performed on the length of Cable. The cut ends of the length of Cable  
19 were immersed in melted paraffin which was allowed to harden and seal the Cable ends. The length  
20 of Cable was placed in a plastic tub, immersed in Walnut Creek tap water for an undetermined length  
21 of time. A sample was taken of the water in which the length of Cable was immersed. This water  
22 sample was sent to the same laboratory as performed the first water sample taken of water in which  
23 the length of Cable was immersed (described above). Analysis of the water sample taken in this  
24 second test showed that the water contained a concentration of 29 micrograms of lead per liter of  
25 water. The protocol the laboratory used to analyze the above-described samples is described in the  
26 laboratory reports, all of which will be produced. In addition, a photograph of the paraffin end-sealed  
27 length of cable, sitting in the plastic tub, will also be produced. The length of Cable and plastic  
28

1 container used in this sample collection are in the custody of counsel for Plaintiff and can be arranged  
2 so that Defendant can inspect them.

3 **INTERROGATORY NO. 2:**

4 IDENTIFY each of YOUR members who YOU contend has been injured due to the CABLES,  
5 and for each member identified, describe the nature, extent, and alleged cause of the injury.

6 **RESPONSE TO INTERROGATORY NO. 2:**

7 Plaintiff objects to the extent that the request seeks information protected by an attorney client  
8 privilege or constitutes attorney work product. Plaintiff further objects that the request is vague and  
9 ambiguous in its use of the undefined phrase “has been injured,” and Plaintiff interprets this phrase  
10 to include all injuries recognized for the purposes of Article III standing and answers accordingly.  
11 Plaintiff further objects to this Interrogatory as it is compound, seeking both the identities of certain  
12 members and their alleged injuries. Without waiving these objections and subject to them, Plaintiff  
13 responds as follows:

14 CSPA contends the following members have suffered injuries sufficient to demonstrate  
15 Article III standing:

- 16       • Richard Izmirian  
17       • Alan Wilhelmy  
18       • Harry Petrakis  
19       • William Uyeki  
20       • Chris Shutes

21 Richard Izmirian is currently a member of CSPA and has been since 1985. Over the years, he  
22 has made numerous monetary donations to CSPA. He is currently a member of CSPA’s Board of  
23 Directors and has served in that capacity for decades. Mr. Izmirian’s family vacationed at Lake Tahoe  
24 at least every other summer while he was growing up. He and his family swam, fished, and played  
25 in Lake Tahoe, and currently he has family members that have a residence at Lake Tahoe. As an adult,  
26 Mr. Izmirian has fished extensively in the Truckee River and Pyramid Lake downstream from Lake  
27 Tahoe. He has organized and managed a number of fly-fishing events at Lake Tahoe that have brought  
28 hundreds of people to the Lake.

1 Alan Wilhelmy is currently a member of CSPA and has been since approximately 2010. Mr.  
2 Wilhelmy has donated to CSPA several times over the past ten to twelve years, and his last donation  
3 to CSPA was in December 2023. Mr. Wilhelmy has vacationed at a friend's home on Lake Tahoe in  
4 Tahoe City a number of times. When he visits, he often fly fishes the Truckee River and the Little  
5 Truckee. He also swims and paddle boards in the Lake.

6 Harry Petrakis is a current member of CSPA and has been for approximately ten years. He  
7 has made three to four donations to CSPA since becoming a member, totally less than \$400. Mr.  
8 Petrakis is also a member of the Santa Cruz Flyfishing Club and the Granite Bay Flycasters. I have  
9 had a vacation home near Tahoe City since 2017. For over fifty years, Mr. Petrakis and his wife have  
10 enjoyed swimming, picnicking, hiking, fishing, and boating on and in Lake Tahoe. Lake Tahoe is of  
11 particular interest to Mr. Petrakis because his wife Linda was raised on the south shore of Lake Tahoe  
12 and has many fond memories of the Lake. Mr. Petrakis and his wife raised their children enjoying  
13 activities on and in the Lake as well. Mr. Petrakis' family drinks water that comes from Lake Tahoe,  
14 and/or wells near the lake. He also enjoys viewing the flora and fauna in and around the lake and our  
15 activities in Lake Tahoe's relatively pristine environs. Lake Tahoe's pristine environment, pure water,  
16 and flora and fauna instill a sense of wonder and renewal in Mr. Petrakis, as well as his family. As a  
17 result, Mr. Petrakis looks forward to going and make trips to the Lake frequently. Mr. Petrakis  
18 believes that Lake Tahoe is one of the most pure bodies of water in the world and that it should remain  
19 that way.

20 William Uyeki is currently a member and has been a member of CSPA since at least 2017.  
21 He has donated to CSPA approximately two times over the last six years. He is a past president and  
22 has served on the Board of Directors for Peninsula Fly Fishers, a recreational fly fishing nonprofit  
23 club in Redwood City, CA. He is also a current member and donor for the following additional  
24 conservation organizations: California Trout, Trout Unlimited, Fly Fishers International, and The  
25 Wild Salmon Center. He has performed volunteer work for the California Department of Fish and  
26 Wildlife (CDFW) at Pescadero Creek on the San Mateo County coast, which consisted of assisting  
27 with fish sampling surveys and conducting angler surveys on behalf of CDFW. Since 2009, Mr. Uyeki  
28 has fly-fished near Sutcliffe, Nevada, at Pyramid Lake which is fed by the Truckee River, downstream

1 of Lake Tahoe. He has fished Pyramid Lake annually since 2018 (and sometimes 2-3 times a year)  
2 from personal watercraft and from ladders, so his hands are in constant contact with the Lake's water.  
3 Mr. Uyeki has also fished in the Truckee River periodically since the late 1990s, including wading in  
4 the Truckee River downstream from Lake Tahoe near Alpine Meadows (where Bear Creek flows into  
5 the Truckee) and further downstream near Boca and at Floriston. He expects to continue fishing both  
6 Pyramid Lake annually and the Truckee River frequently in future years. He enjoys fishing those  
7 pristine waters, and it's extremely important to him that these waters are safe and do not contain  
8 toxins that would harm the micro-organisms and aquatic life upon which the fish populations are  
9 highly dependent. It's also important to Mr. Uyeki that these waters are safe for human beings.

10 Chris Shutes is the Executive Director of CSPA and has worked for the organization for  
11 eighteen years. As Executive Director of CSPA, he is extremely concerned about water quality and  
12 quantity issues across the State of California and has dedicated many years of his life to ensuring that  
13 his daughter and grandchildren can enjoy these natural resources as much as he has. Mr. Shutes is a  
14 lifelong California fisherman. He first fished in Lake Tahoe and one of its tributaries when he was  
15 about ten years old, when he camped with his father and sister at Meeks Bay. As a teenager, Mr.  
16 Shutes spent a week or more over several summers at summer homes of schoolmates at the north end  
17 of Lake Tahoe. He fished in Lake Tahoe itself, in one of its tributaries, and in the Truckee River  
18 downstream of Lake Tahoe. He also boated in the Truckee River. As a teenager, Mr Shutes also spent  
19 two summers with his mother and sister at the cabin of a family friend at Echo Summit on Highway  
20 50. Going and coming to that cabin, he enjoyed breathtaking views of Lake Tahoe and the surrounding  
21 mountains. He also enjoyed the views travelling to South Lake Tahoe, over Luther Pass south of Lake  
22 Tahoe, and driving along the west shore of Lake Tahoe to Fallen Leaf Lake, Emerald Bay, and Tahoe  
23 City. As a young adult, Mr. Shutes hiked in Desolation Valley Wilderness Area near the southwest  
24 flank of Lake Tahoe. The hike out of Rockbound Valley over to Emerald Bay afforded Mr. Shutes  
25 one of the most magnificent visual experiences of his life, cresting the ridge to see Emerald Bay and  
26 Lake Tahoe below. As an adult, Mr. Shutes returned to some of the areas around Lake Tahoe that he  
27 fished as a child, as much to see the Lake as for the fishing. He has also driven along the Lake and  
28 along the lower Truckee River at various times traveling to and from other locations.

1 As part of his work with CSPA, Mr. Shutes worked on the El Dorado National Forest's and  
2 El Dorado County's planning for Off-Highway Vehicle use. Part of that work sought to limit erosion  
3 along one of the tributaries to Lake Tahoe that he fished as a child. On behalf of CSPA, he has also  
4 worked to assure adequate inflow to the upper Truckee River, Lake Tahoe's biggest tributary, from  
5 Echo Creek. Echo Creek provides juvenile rearing habitat for trout that are the progeny of spawners  
6 that move upstream from Lake Tahoe. He is also a client representative in litigation against the  
7 Lahontan Regional Water Quality Control Board concerning excessive nutrient discharges into Lake  
8 Tahoe from a development at the mouth of the Upper Truckee River, as well as the client  
9 representative for CSPA for this litigation.

10 All of these members are aware of the lead-containing cables in Lake Tahoe they understand  
11 are or were owned and operated by Defendant. They are concerned that the lead in the cables is  
12 discharging into the Lake and that these pollutants will harm the health of the lake, the Truckee River,  
13 and all downstream tributaries, which they use and enjoy. They are also concerned that the pollutants  
14 will endanger the health of themselves, family, friends, and the others, as well as animals, that use the  
15 Lake for drinking and/or swimming. They are concerned that the pollution will cause the Lake to  
16 suffer harm to its reputation and potentially diminish the tourism economy upon which the region  
17 relies. The members' knowledge of the discharges of lead from the cables prevents them from fully  
18 enjoying their recreational, aesthetic, and other activities at Lake Tahoe.

19 **INTERROGATORY NO. 3:**

20 State all facts supporting any injuries YOU contend YOU have suffered due to the CABLES.

21 **RESPONSE TO INTERROGATORY NO. 3:**

22 Plaintiff objects to the extent that the request seeks information protected by an attorney client  
23 privilege or constitutes attorney work product. Plaintiff further objects that the request is vague and  
24 ambiguous in use of the phrase "injuries", also in its lack of time specification. Plaintiff interprets this  
25 phrase to include all injuries recognized for the purposes of Article III standing and answers  
26 accordingly. To the extent this Interrogatory seeks information regarding Plaintiff's members, other  
27 than the members that Plaintiff has identified in Interrogatory No. 2, Plaintiff objects to the  
28 Interrogatory as irrelevant and the information is protected under the First Amendment of the U.S.

1 Constitution. *See NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958); *Perry v.*  
2 *Schwarzenegger*, 591 F.3d 1126 (9th Cir. 2010); *Planned Parenthood Federation of America, Inc. v.*  
3 *Center for Medical Progress*, 2018 WL 2441518, at \*8-11 (N.D. Cal. May 31, 2018). Plaintiff further  
4 objects to the extent the information requested is properly the subject of expert testimony and  
5 responses will be provided to properly promulgated expert discovery.

6 Without waiving these objections and subject to them, Plaintiff fully incorporates its response  
7 from Interrogatory No. 2 herein.

8 **INTERROGATORY NO. 12:**

9 Describe in detail all standards that YOU followed in testing lead-clad cables.

10 **RESPONSE TO INTERROGATORY NO. 12:**

11 Plaintiff objects to the extent the request seeks information protected by an attorney client  
12 privilege or constitutes attorney work product. Plaintiff further objects that the request is vague and  
13 ambiguous in use of the word “tests” and “standards.” Plaintiff further objects that the subject of this  
14 request or interrogatory is properly the subject of expert testimony and responses will be provided to  
15 properly promulgated expert discovery. Without waiving these objections and subject to them,  
16 Plaintiff incorporates its response to Interrogatory No. 1 herein. Plaintiff also points Defendant to  
17 Bates Nos. CSPA000002-13 and CSPA003079-3086.

18 Dated: February 5, 2024

AQUA TERRA AERIS LAW GROUP

19 /s Erica A. Maharg

20 Erica A. Maharg

21 Attorneys for Plaintiff CALIFORNIA  
22 SPORTFISHING PROTECTION ALLIANCE

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## PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Alameda. My business address is 4030 Martin Luther King Jr. Way, Oakland, California 94609. I am over the age of 18 years and not a party to the above-entitled action. Document(s) served:

- **PLAINTIFF'S FIRST AMENDED RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES**

On February 5, 2024, I served the foregoing document(s) on the parties in this action, located on the **attached service list**, by placing copies thereof in sealed envelopes addressed as shown below for service as designated below:

- ( ) By First Class Mail: Deposited the sealed envelope with the United States Postal Service, with the postage fully paid.

( ) By Personal Service: I personally delivered each such envelope to the office of the address on the date last written below.

( ) By Overnight Mail: I caused each such envelope to be placed in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for.

(xx) By Electronic Transmission: Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 5, 2024, in Hayward, California.

Esmralda Bustos  
Esmralda Bustos

1                   **SERVICE LIST**

2 NAVI DHILLON  
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17 *Attorneys for Pacific Bell Telephone Company*

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# **EXHIBIT 3**

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25 Attorneys for Defendant  
26 PACIFIC BELL TELEPHONE COMPANY

17 UNITED STATES DISTRICT COURT  
18 EASTERN DISTRICT OF CALIFORNIA

19 CALIFORNIA SPORTFISHING  
20 PROTECTION ALLIANCE,  
21 Plaintiff,  
22 v.  
23 PACIFIC BELL TELEPHONE COMPANY,  
24 Defendant.

CASE NO. 2:21-cv-00073-MCE-JDP

**DEFENDANT PACIFIC BELL  
TELEPHONE COMPANY'S AMENDED  
RESPONSES TO PLAINTIFF'S FIRST  
SET OF REQUESTS FOR ADMISSION**

25 PROPOUNDING PARTY: PLAINTIFF California Sportfishing Protection Alliance  
26 RESPONDING PARTY: DEFENDANT Pacific Bell Telephone Company  
27 SET NUMBER: ONE

28 DEFENDANT'S AMENDED RESPONSES TO  
PLAINTIFF'S REQUESTS FOR ADMISSION (SET  
ONE)

CASE NO. 2:21-cv-00073-MCE-JDP

Pursuant to the Federal Rules of Civil Procedure (FRCP) and the Local Rules for the United States District Court for the Eastern District of California (Local Rules), Defendant Pacific Bell Telephone Company (Defendant) hereby provides its amended responses to Plaintiff California Sportfishing Protection Alliance's (Plaintiff) first set of Requests for Admission (Request or Requests).

#### **PRELIMINARY STATEMENT**

Defendant is presently pursuing its investigation and analysis of the facts and law relating to this case and has not completed its discovery or preparation for trial. Therefore, the amended responses set forth herein are given without prejudice to Defendant's right to produce evidence of any subsequently discovered facts, writings or interpretations thereof, or to modify, change or otherwise amend these responses. The information set forth herein is true and correct to the best knowledge of Defendant as of this date, and is subject to correction for errors, or omissions.

These amended responses are based upon records and information presently available to Defendant. Defendant undertakes no affirmative duty to supplement these responses based upon further discovery and investigation, other than as required by Rule 26(e). References in a response to a preceding or subsequent response incorporate the information and objections stated in the referenced response.

#### **GENERAL OBJECTIONS**

Defendant makes the following General Objections and Objections to Definitions and Instructions and incorporates them into its response to each and every Request, whether or not specifically stated in an individual response. An assertion of the same, similar, or additional objections in response to a specific Request does not waive any General Objections as to that or any Request. Defendant's failure to object to a specific Request on a particular ground shall not be construed as a waiver of its right to object on any ground.

1. Defendant objects to each Request, including any applicable Definition or Instruction, to the extent it purports to impose obligations that exceed the permissible scope of discovery as set forth in Rule 26(b).

1       2. Defendant objects to each Request to the extent it seeks information and/or  
2 documents protected by any applicable privilege, including without limitation, the attorney-client  
3 privilege, the attorney work-product doctrine, the right to privacy, the confidentiality of statements  
4 made and conduct engaged in for settlement purposes, and any and all other rights and privileges  
5 which protect such information from disclosure.

6       3. Defendant objects to each Request to the extent that it: (a) conflicts with any  
7 schedule entered by the Court; (b) conflicts with obligations that are imposed by the FRCP, the  
8 Local Rules, or any other applicable rules; (c) seeks information that is the subject of expert  
9 testimony; or (d) seeks information or responses that are dependent on depositions and documents  
10 that have not been taken or produced.

11      4. Defendant objects to the definitions of "You," or "Your" as vague, ambiguous,  
12 overbroad, and unduly burdensome because it broadly includes "all past and present names of the  
13 corporation and/or limited liability company, all predecessors and successors, and to all of its  
14 employees, agents, officers, directors, and representatives, INCLUDING any PERSON who has  
15 served in any such capacity at any time, and/or anyone purporting to act on YOUR behalf, or at  
16 YOUR request with YOUR authorization."

17      5. Defendant objects to each Request to the extent it calls for a legal conclusion.

18      6. Defendant objects to each Request to the extent that it calls for supporting facts that  
19 are not reasonably ascertainable or available at this stage of the litigation. Defendant objects to  
20 such Requests on the grounds that they are overbroad, unduly burdensome, or premature.

21      7. Defendant objects to each Request to the extent that it seeks information protected  
22 by any constitutional, statutory, or common-law right of privacy, as to which right Defendant has  
23 a duty to protect.

24      8. Defendant objects to each Request to the extent that it calls for any confidential,  
25 proprietary, and/or trade secret information.

1                   **AMENDED RESPONSES TO REQUESTS FOR ADMISSIONS**

2                   **REQUEST FOR ADMISSION NO. 19:**

3                   Admit that YOU currently own the CABLES.

4                   **AMENDED RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

5                   Defendant objects to this Request to the extent it seeks privileged information or  
6 information protected by the work-product doctrine or any other applicable privilege or protection.  
7 Defendant further objects to this Request because it improperly calls for a legal conclusion.

8                   Subject to the above general and specific objections, Defendant responds as follows:

9                   Admit.

10                  DATED: May 27, 2024

11                  Respectfully submitted,

12                  \_\_\_\_\_  
13                  */s/ Hariklia Karis*

14                  Hariklia Karis  
15                  Attorney for Defendant  
16                  PACIFIC BELL TELEPHONE COMPANY

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